◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE K.C.BHANU

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+ W.A.Nos. 1355 & 1388 OF 2005

% Dated 28.1.2006

# E. Sugunamma

…. Appellant

Vs.

$ The District Collector, Mahaboobnagar and others

….Respondents

! Counsel for appellant: Mr. D. Jagan Mohan Reddy

^Counsel for Respondents: Mr. B. G. Ravinder Reddy,

G.P. for Panchayat Raj & Rural Development

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> HEAD NOTE:

? Cases referred

1. 2004 (1) ALD 54 (DB);

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE K.C.BHANU

W.A.NOs. 1355 & 1388 OF 2005

Dt.28.1.2006

Between:

E.Sugunamma

…Appellant

and

The District Collector, Mahaboobnagar and others

…Respondents

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE K.C.BHANU

W.A.NOs. 1355 & 1388 OF 2005

COMMON JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

The appellant filed a writ petition being WP No. 14793 of 2004 challenging the proceedings No. E/1854/01, dt. 27.7.2004 and seeking its quashing as being violative of Articles 14 and 21 of the Constitution of India and Section 233 of the Panchayat Raj Act, 1994 (for short "the Act").

It appears that on an enquiry the District Collector, Mahaboobnagar found that the writ petitioner did not belong to BC category on the basis of which she got elected Sarpanch of Manganoor Grampanchayat, but she belongs to OC Balija. The Collector, on receipt of a complaint from one M. Ashanna, conducted an enquiry, obtained reports from Superintendent of Police, Revenue

Divisional Officer and Mandal Revenue Officer and gave a show cause notice to the writ petitioner. She filed her reply, but could not submit her original caste certificate which she had not even submitted at the time of nomination before the screening committee. Therefore, in exercise of the powers under Section 249 (4) of the Act the District Collector removed the writ petitioner from the office of Sarpanch. The learned single Judge found from the records that the Collector had passed an order under Section 249 (4) of the Act and that order was appealable 249 (7) of the Act, therefore he refused to exercise the jurisdiction under Article 226 of the Constitution of India and gave liberty to the writ petitioner to approach the competent authority by way of filing an appeal. Thereafter the writ petitioner filed a review before the learned single Judge being WPMP No. 19265 of 2005. In the review petition it was contended that the Collector had invoked the jurisdiction of Election Tribunal which was contrary to the judgment of this Court reported in *Chava Rosaiah Vs. Chintala Venkateswarlu and another* and she could have only been removed if the procedure under Section 22 of the Act was followed. It was also contended before the learned single Judge that the Collector could only initiate proceedings with regard to the functions of Sarpanch in terms of Section 249 (4) of the Act, but could not hold any enquiry with regard to the election of the writ petitioner. This review petition was also dismissed. The appellant filed WA No. 1388 of 2005 against the order passed in the writ petition and also WA No. 1355 of 2005 against the order of rejection of review.

The controversy is very short as to whether the Collector could remove the writ petitioner in terms of Section 249 (4) of the Act on coming to a conclusion, after an enquiry, that the writ petitioner did not belong to BC on the basis of which she got elected Sarpanch. Section 249 of the Act lays down,

> "249. **Powers of Government to remove Sarpanch, President or Chairman etc**:- (1) If in the opinion of the District Collector the Sarpanch or the Upa-Sarpanch and in the opinion of the Government the President or the Vice-President or as the case may be,

the Chairman or the Vice-Chairman,

i. willfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; or

ii. abused his position or the powers vested in him; or

iii. is guilty of misconduct in the discharge of his duties; or

iv. persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the concerned local body or has become incapable of such performance.

The Collector or as the case may be, the Government, may remove such Sarpanch or Upa-Sarpanch, President or Vice-President or as the case may be the Chairman or the Vice-Chairman, after giving him an opportunity for explanation;

Provided that the proceedings initiated under this sub-section may be continued notwithstanding the fact that the Sarpanch or Upa-Sarpanch, President or Vice-President, or as the case may be, the Chairman or Vice-Chairman ceased to hold office by resignation or otherwise and shall be concluded within two years from the date of such cessation and where on such conclusion the authority competent to remove him, records a finding after giving an opportunity of making a representation to the person concerned that the charge or charges proved against him are sufficient for his removal, then the provision of sub-section (3) shall apply to the person against whom such finding is recoded.

(2) Where the Sarpanch or Upa-Sarpanch, the President or the Vice-President or the Chairman or Vice-Chairman is removed under sub-section (1) the vacancy shall, subject to the provisions of sub-section (3) be filled as casual vacancies.

(3) A Sarpanch or Upa-Sarpanch, a President or a Vice-President or Chairman or Vice-Chairman removed from his office under this section shall not be eligible for re-election as Sarpanch or Upa-Sarpanch, President or Vice-President or Chairman or Vice-Chairman for a period of two years from the date of the removal.

(4) If the District Collector is satisfied that any elected member of the Gram Panchayat or the Government are satisfied that any elected member of a Mandal Parishad or Zilla Parishad is guilty of any misconduct while acting or purporting to act in the discharge of his duties, or in the performance of the functions, under this Act, the District Collector or as the case may be, the Government may, by order, remove such member, after giving him an opportunity for explanation, and any member so removed shall not be eligible for re-election as a member for a period of two years from the date of removal."

Sub-section (4) of Section 249 of the Act is applicable only in cases if the conditions in sub-section (1) are satisfied. Sub-section (4) gives powers to the Collector to remove any member if he finds him guilty of any misconduct while acting or purporting to act in the discharge of his duties or in the performance of the functions under the Act. Sub-section (1) of Section 249 of the Act lays down that Sarpanch and other members could be removed provided the Collector was of the opinion that such Sarpanch or other members had (i) willfully omitted or refused to carry out the orders of the Government, (ii) abused the position or the powers vested in them; (iii) were guilty of misconduct in the discharge of their duties; (iv) persistently defaulted in the performance of their functions and duties. Unless the conduct of the Sarpanch falls in one of these conditions, it cannot be said that he was guilty of any misconduct. Even if his act falls in one of the conditions as laid down in sub-section (1) of Section 249 of the Act, that misconduct had been committed by the Sarpanch while acting or purporting to act in the discharge of his duties. That would always mean that Section 249 (1) and (4) of the Act would only apply while a person was discharging his duties as Sarpanch; and his conduct before the elections or during the elections would not fall

within Section 249 of the Act at all. This is further clarified by Section 22 of the Act in which it is specifically mentioned that if there is any allegation that a person who has been elected as a member of Gram Panchayat was not qualified to become a member or had incurred disqualification after election, the matter has to be referred to the District Munsif having jurisdiction over the area. Section 22 (1) of the Act is reproduced below,

> " 2 2 . **Authority to decide questions of disqualifications of members**;- Where an allegation is made that any person who is elected as a member of a Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the Executive Authority in writing and the Executive Authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the Executive Authority, at the direction of the Gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Munsif having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision."

Since the order impugned in the writ petition was clearly without jurisdiction, therefore the writ petitioner could not be forced to file an appeal under Section 249 (7) of the Act. The District Collector had no jurisdiction to pass the order impugned in the writ petition and if, during his enquiry, he found that the writ petitioner was not eligible at the time of election, the only course open to him was to refer the matter to the District Munsif having jurisdiction over the area. The writ petitioner has relied on *Chava Rosaiah Vs. Chintala Venkateswarlu and another* (1st supra). We are also told that an election petition is already pending.

In this view of the matter, the writ appeals are allowed, the orders passed by the learned single Judge in writ petition and in review petition are quashed, the impugned order passed by the District Collector is also quashed. However it is made clear that this Court has not gone into merits of the controversy as to whether the writ petitioner belongs to BC or OC category. This will have to be decided by the competent authority in accordance with law. Any observations made in this judgment shall not be taken as expression of opinion with regard to the eligibility of the writ petitioner. No costs.

Dt.28.1.2006 _____

BILAL NAZKI J.

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K.C.BHANU J.

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